

**INTERGOVERNMENTAL AGREEMENT
FOR
HIGHWAY AND PUBLIC WORKS PROJECTS**

THIS AGREEMENT is made and entered into by and between Cochise County, a political subdivision (hereinafter called “the COUNTY”) and St. David Fire District, a political subdivision within Cochise County (hereinafter called “the Public Agency”) for the purpose of exercising their respective joint powers and contracting the services to complete paving and other public works projects.

WHEREAS, the COUNTY has available, on a limited basis, certain employees, equipment and materials through the Cochise County Highway and Floodplain Department which may be of significant benefit on various paving and public works projects of the Public Agency; and

WHEREAS, the cooperative use of COUNTY staff, equipment and materials for work on the Public Agency projects, when such resources are not scheduled for COUNTY projects, may be in the best interests of all citizens of Cochise County; and

WHEREAS, both the COUNTY and the Public Agency are in favor of maximizing the public benefit that can be derived from the cooperative use of public resources; and

WHEREAS, this AGREEMENT, contracting for certain services between governments, is authorized by A.R.S. § 11-951 et seq., A.R.S. § 41-2631 et seq., A.R.S. § 15-213, A.A.C. R7-2-1191 et seq., A.R.S. § 15-1444 and A.A.C. R7-1-505, as applicable,

IT IS HEREBY AGREED THAT:

1. Upon written request of the Public Agency, and subject to the provisions of this Agreement, the County shall make such COUNTY staff, equipment and materials, not otherwise required or scheduled for COUNTY projects, available to assist the Public Agency on paving or public works projects on Public Agency property. COUNTY staff and equipment shall generally be available only outside of the COUNTY’s regularly scheduled workweek, unless special arrangements are made for a particular project of exceptional importance. If, in the sole opinion of the Department Director, or his/her designee, the requested COUNTY staff, equipment or materials are not readily available

to fulfill the request, the Public Agency shall be advised of this fact and the COUNTY shall have no further obligation regarding that request. The Department Director shall consider the following factors in making his/her determination as to the availability of COUNTY resources:

- a. Type of project. Does the project benefit the County or a significant number of County residents? Generally, projects that involve improvements or maintenance of public roads or flood control/drainage facilities will be preferred over other types of projects.
- b. Construction projects that exceed the statutory limits of A.R.S. § 34-201 or A.R.S. § 48-3603.15 will be rejected. For the purposes of this policy, “construction”, “operation” and “maintenance” shall be defined consistently with the definitions of A.R.S. § 34-101.

Construction: Means the process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. Construction does not include routine operation, routine repair or routine maintenance of and existing facility.

“Operation & Maintenance”: Includes only the routine operation, routine repair, or routine maintenance of existing facilities, structures, buildings or real property or demolition projects costing less than two hundred thousand dollars. This work will not significantly alter the size or shape of the existing improvement and, for roadways or drainage improvements, will not include any change in the type of existing surfacing.

- c. Availability of adequate and skilled manpower to conduct the project.
- d. Equipment requirements. Does the project involve the efficient use of County-owned equipment?
- e. Mobilization requirements for the project. Does the department have the required equipment close by?
- f. Are projects equitably distributed among entities and throughout the County? The Department will attempt to prevent a small group of participants from obtaining most of the benefits of this program and will attempt to provide these projects to those entities that may not have the resources to fund the projects by alternative means. The Department

will also attempt to provide opportunities for this work to Department employees throughout the County.

- g. Projects should generally not involve more than 14 crew days of work or cost more than \$50,000.
- h. Potential for liability. In general, the County will not undertake projects with an entity that does not have the capacity to bear the liability associated with it or that may present a significant risk of liability to the County.

2. A request by the Public Agency to include a highway and/or public works project should be submitted to the Highway and Floodplain Department in writing by February 15th of each year for inclusion in the next fiscal year's program. The Department Director will prepare his/her recommendations for the coming fiscal year and the Board of Supervisors will approve an annual IGA Work Plan during its budget process. Special or additional projects may be considered on a case by case basis during the year, resources permitting, if the Public Agency demonstrates exceptional circumstances that preclude the submittal of this project prior to this scheduling date. In such instances, the project shall require the recommendation of the Department Director and prior notification (with right of rejection) to the County Administrator and Board of Supervisors.

3. The Department Director, through his/her designated project manager, shall provide the Public Agency with a written estimate of the anticipated costs prior to the start of the project. The Public Agency must submit a written approval of this estimate and authorization to proceed before the work will begin. The Public Agency warrants and agrees that it will not use the estimate to drive down quotes from private contractors and will contract with the County only where private contracting is not reasonably available. Breach of this provision is cause for the County to refuse or terminate a project.

4. During work on any such Public Agency project, COUNTY staff shall maintain their status as COUNTY employees, but shall perform under the direction and authority of the designated Public Agency supervisor. Notwithstanding the foregoing, an employee of either party shall be deemed to be an "employee" of both public agencies while performing pursuant to this agreement, for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency

pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

5. The Department Director, or his/her designee, reserves the right to terminate COUNTY work on any particular project immediately if, in his/her opinion, the work poses any undue risk of harm to persons or property, is not being carried out in conformance with generally accepted standards or is not in compliance with applicable laws or regulations. The designated project supervisor for the County shall retain the authority to take such actions as may be necessary to protect the health and safety of County employees and to maintain and preserve County equipment. The Public Agency shall retain the full responsibility for compliance with all of the laws and regulations that may be applicable to the performance of the subject project on the Public Agency's property, including responsibility for obtaining any necessary permits and complying with its own procurement rules, unless the COUNTY has expressly agreed, in writing, to assume the responsibility for any specific portion of these requirements.

6. The Public Agency shall reimburse the COUNTY for the COUNTY'S performance by the payment of the total cost for the following components of this work:

- a. COUNTY employee labor costs will be based on one and one half times each employee's regular County pay rate. This labor costs shall include benefits and all other related costs actually incurred by the COUNTY for this work;
- b. Equipment costs, to be billed at the rate paid by the County; including the full costs for all fuel and replacement parts including components consumed by or expended on the work on the project, maintenance, repair and depreciation for each item of equipment used on this project. The County reserves the right to update these rates as necessary. The Public Agency shall be informed of these rates with each proposal and said rates shall be deemed to be an amendment to this Agreement upon receipt, provided that no such amendments shall be applicable to a project that has already been initiated; and
- c. The cost of all construction materials, to be billed at the rate paid by the COUNTY for such materials.

The COUNTY shall submit an itemized invoice to the Public Agency for these costs, which shall be paid within twenty (20) days of the date of the invoice. Payment shall be made on the basis of this invoice and shall not be limited or increased by the amount of the prior estimate.

7. Each party agrees to assume responsibility for all claims, demands, suits, damages, and loss ("claims") which result from the negligence or intentional torts of that party or its agents, officers and employees in the performance of this AGREEMENT, but only to the extent that such claims arise from such negligence or intentional torts. The extent of the foregoing liabilities shall be limited to, and determined by, the respective fault of the parties, their agents, subcontractors and employees in comparison with others (including, but not limited to, the other party) who may have contributed to or in part caused any such claim to arise.

8. This AGREEMENT may be terminated by either party upon written notice from either party, with or without cause. Any such termination shall end all further obligations except for the payment for previously performed work and the continuing obligation for any indemnity, as stated above. This AGREEMENT may be canceled pursuant to A.R.S. § 38-511.

9. Pursuant to A.R.S. § 11-952(D), an attorney for the Public Agency and the COUNTY must review this AGREEMENT. For those Public Agencies that are also represented by the Office of the Cochise County Attorney, each party has knowingly and voluntarily authorized the Office of the Cochise County Attorney to conduct his review on its behalf.

10. This AGREEMENT shall run for a period of one year and shall automatically renew at the end of that period unless either party gives notice to the contrary.

11. This AGREEMENT shall not become effective until it is reviewed by legal counsel, executed by both parties and filed with the Cochise County Recorder.

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT this _____ day of _____, 2012.

The Public Agency
ST. DAVID FIRE DISTRICT

COUNTY OF COCHISE

By: _____
(Print Name) _____
(Print Title) _____

By: _____
Richard R. Searle, Chairman
of Board of Supervisors

ATTEST:

Clerk

ATTEST:

Katie Howard, Clerk of the Board
of Supervisors

APPROVED AS TO FORM:

Public Agency Attorney

APPROVED AS TO FORM:

Britt W. Hanson, County Attorney

INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: Intergovernmental Agreement for Highway and Public Works

The attached agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Deputy County Attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Cochise County.

APPROVED AS TO FORM this _____ day of _____, 2012

COCHISE COUNTY ATTORNEY

By: _____
Britt W. Hanson, Chief Deputy
County Attorney

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In accordance with A.R.S. § 11-952 this agreement has been reviewed by the undersigned who has determined that this agreement is in appropriate form and within the powers and authority granted to the public body or bodies identified below.

This ____ day of _____, 2012

By: _____
Public Agency Legal Counsel

Name of Public Agency